IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

DENSTPLY INTERNATIONAL INC. Plaintiff, v. Edge ENDO, LLC Defendant.	Civil Action No. 16-cv-02492 JURY DEMAND

DENTSPLY'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Dentsply International Inc. ("Dentsply" or "Plaintiff"), pursuant to the Lanham Act, 15 U.S.C. §§ 1114 and 1125, and Federal Rule of Civil Procedure 65, respectfully moves this Court for entry of a Temporary Restraining Order and a Preliminary Injunction.

Defendant Edge Endo, LLC intends to introduce a product that infringes on Plaintiff's mark at a trade show beginning this Thursday, February 25, 2016. As set forth in the supporting memorandum, the Verified Complaint, and the supporting declaration and exhibits, Dentsply has shown that it is likely to succeed on its claims, as it is the registered owner and user of a mark, and Defendant Edge Endo, LLC is infringing on that mark with a product that will compete directly with Dentsply. Moreover, Dentsply will suffer irreparable harm in the absence of preliminary relief. Finally, the balance of equities and the public interest favor injunctive relief.

WHEREFORE, Dentsply respectfully requests that this Court temporarily restrain and enjoin Edge Endo, and its officers, directors, agents, employees, attorneys, successors, and assigns, and all others in active concert or participation with any of them, from:

(a): using EdgePathFile, PathFile or any other trademark, service mark, name, logo, or source designation of any kind that is a copy, reproduction, colorable imitation, or simulation of or confusingly similar to Dentsply's PathFile trademark, or is likely to cause confusion, mistake, deception, or public misunderstanding between Edge Endo and Dentsply, or suggest that Edge Endo or its products are from, or authorized, sponsored or approved by, or in any way related to Dentsply;

(b): representing by any means whatsoever, directly or indirectly, that any products sold or services rendered by Edge Endo are associated with, sponsored by, and/or connected or affiliated with Dentsply, or from otherwise taking any action likely to cause confusion, mistake or deception on the part of purchasers as to the origin or sponsorship of Edge Endo's products;

(c): promoting any products using the EdgePathFile, PathFile at the Chicago Dental Society MidWinter Meeting, occurring from February 25-27, 2016;

(d): otherwise continuing any and all acts of infringement, unfair competition, and deceptive trade practices as alleged in this Complaint, and

That the Court direct Edge Endo to recall and destroy any products or packaging that it has sold or distributed to others using the mark EdgePathFile.

Dated: February 22, 2016

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DENTSPLY'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Dentsply International Inc. ("Dentsply" or "Plaintiff") files this Memorandum of Points and Authorities in Support of its Emergency Motion for Temporary Restraining Order and Preliminary Injunction to enjoin Defendant Edge Endo, LLC ("Edge Endo" or "Defendant") from further infringement of Dentsply's federally registered mark PathFile.[1]

I. INTRODUCTION

As set forth in Dentsply's Verified Complaint and the accompanying Declaration of Michael Phillips ("Phillips Dec."), Dentsply has been selling endodontic files under the federally-registered mark PathFile since February 2010. During that time Dentsply has advertised and sold its PathFile products, and developed tremendous goodwill in the PathFile trademark. Edge Endo is a direct competitor of Dentsply. Last week, Edge Endo introduced a

[1] In addition to its federal claims under 15 U.S.C. §§ 1114(1) and 1125(a), Dentsply's Verified Complaint also asserts claims under Illinois statutory and common law. However, this motion is solely based on the federal claims (Counts I and II).

directly competitive product under the name "EdgePathFile™", advertising that its product is "half the price" of the implicitly referenced Dentsply PathFile product. The promotional material states: "Be among the first to see the NEW EdgePathFile™ when we debut at the Chicago Dental Society MidWinter Meeting next week." Thus, Edge Endo plans to introduce a competing product to Dentsply's PathFile product, and will do so using a mark that is identical to Dentsply's federally registered mark. (Imagine Burger King launching a new hamburger and calling it the Burger King Big Mac™?).

This motion is brought on an emergency basis because Edge Endo intends to "debut" its infringing product at the Chicago Dental Society MidWinter Meeting, which will begin this Thursday, February 25. Edge Endo's actions, unless immediately enjoined, will cause confusion in the market and irreparable harm to Dentsply.

II. STATEMENT OF THE FACTS AND PROCEDURAL BACKGROUND

Dentsply is a well-known leading manufacturer and distributor of dental and other consumable products in the healthcare product industry in the United States and abroad. Dentsply's oral health products range from general dental consumables and laboratory products to products supporting the dental specialty markets of orthodontics, endodontics, and implants. Phillips Dec. at ¶3.

One of the many dental fields in which Dentsply manufactures and sells products is the field of endodontics. Phillips Dec. at ¶5. Endodontics is the dental specialty concerned with the study and treatment of the dental pulp (that part of the tooth made up of connective tissues and cells). Root canal therapy, for example, is one of the most common endodontic procedures, and it is carried out using, among other devices, a file. Phillips Dec. at ¶5. Specifically, files are used to clean and shape the root canal, and are commonly made from metal; usually stainless steel or nickel titanium alloy. Dentsply has long been an industry leader in the development and manufacture of such files. Phillips Dec. at ¶6.

Dentsply developed, and in February 2010 began to sell, a new nickel-titanium alloy endodontic file under the trademark PathFile. "PathFile" was a unique term developed by Dentsply and was not used in the industry prior to Dentsply's use. Phillips Dec. at ¶7. On March 8, 2011, Dentsply obtained U.S. Trademark Registration No. 3,929,706 for the mark PathFile for "Dental instruments, namely, dental root files used in root canal therapy procedures." Phillips Dec. at ¶8, Ex. A. This registration is valid and subsisting. *Id.* Because Dentply's mark PathFile is registered on the principal register, that is *prima facie* evidence of the validity of the mark, of Dentsply's ownership of the mark, and of Dentsply's "exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration." 15 U.S.C. §1115(a).

Dentsply has invested in its PathFile products and the trademark associated with it. PathFile products have substantiated enormous commercial success in the industry. Specifically, since launch of the product in 2010, total sales of PathFile have been approximately $20,000,000.00. That success can be attributed both to the quality of the products and the advertising and promotion associated with the trademark. Since the introduction of the PathFile products in 2010, Dentsply has spent more than $228,000.00 on advertising and promoting these products. Phillips Dec. at ¶10.

Defendant, Edge Endo, is a competitor of Dentsply in the endodontic instrument market. Indeed, Edge Endo expressly promotes its products as being replacements for Dentsply's products, along with its slogan that they are "half the cost" of the Dentsply files. For example, in the "Compatibility" portion of Edge Endo's website, Edge Endo describes its rotary files and explains how customers can make "the transition" from Dentsply products to Edge Endo products. Phillips Dec. at ¶14, Ex. D. Edge Endo has even published a compatibility chart showing which of its products are interchangeable with various Dentsply files. Verified Complaint ¶21 and Exs. D, H.

Edge Endo announced last week: "Be among the first to see the NEW EdgePathFile™ when we debut at the Chicago Dental Society MidWinter Meeting next week." The Chicago trade show will take place from February 25-27, 2016. Phillips Dec. at ¶15, Ex. E. That is, Edge Endo took Dentsply's federally registered trademark PathFile and simply added a portion of its own name ("Edge") in front of it. The Edge Endo product – just like the Dentsply product – is a nickel-titanium alloy file for use in root canals. Phillips Dec. at. ¶17, Ex. E. Edge Endo is also promoting this new product through social media. Phillips Dec. at ¶15, Ex. F. The EdgePathFile appears to be identical to Dentsply's PathFile product. Phillips Dec. at ¶17, Ex. Ex. Thus, Edge Endo is selling a product to directly compete with Dentsply's product using Dentsply's own trademark.

Edge Endo's actions in copying Dentsply's federally-registered trademark are knowing and intentional. As a direct competitor of Dentsply, EdgeEndo was certainly aware of Dentsply's use over the last six years of the federally-registered mark PathFile. It is certainly no coincidence that Edge Endo has chosen to name its product using the Dentsply trademark. Indeed, on an Edge Endo controlled internet forum, there is a topic entitled "pathfile clone" which contains, among other things, a May 1, 2015 posting which reads:

"I love your files. Do you guys have any plans to make a pathfile clone?"

Phillips Dec. Ex. J.

Goodis, the President of EdgeEndo, responded to that entry indicating that he had designed one of Edge Endo's endodontic file products "as a pathfile". Phillips Dec. Ex J. Not content with simply copying Dentsply's product, EdgeEndo has now decided to market a product using Dentsply's federally-registered mark.

Dentsply has worked diligently to establish and uphold its considerable and valuable goodwill in its PathFile mark. Phillips Dec. at. ¶¶10-11. The consumer goodwill and recognition in the PathFile mark, as well as other marks by Dentsply, constitute a valuable asset for Dentsply. The integrity of Dentsply's PathFile mark is extremely valuable to Dentsply and is crucial to the continued vitality and growth of its business. Phillips Dec. at ¶11. That goodwill and reputation is now at risk of immediate and irreparable harm. It is not difficult to see the similarity between the Dentsply PathFile and the EdgePathFile products. Phillips Dec. Exs. B, C, and E. These are products that will directly compete with one another in the same markets for the same customers. Dentsply will suffer irreparable harm if it loses the ability to control its mark through the customer confusion that will surely follow if Edge Endo is permitted to continue its infringing activity.

III. ARGUMENT AND AUTHORITIES

Dentsply is suffering, and will continue to suffer irreparable harm unless Edge Endo is enjoined from infringing Dentsply's federal registered trademark. As such, both a temporary restraining order and a preliminary injunction are warranted.

"A plaintiff seeking a preliminary injunction must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Counsel*, 555 U.S. 7, 20 (2008); *Venus Labs., Inc. v. Vlahakis*, No. 15-cv-1617, 2015 WL 1058264, at *2 (N.D. Ill. Mar. 5, 2015) (noting that the same test applies to both a TRO and a preliminary injunction). While, as an initial matter, a plaintiff must only show that it has a "better than negligible" chance at succeeding on its claim, "an admittedly low requirement," *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S.A, Inc.*, 549 F.3d 1079, 1096 (7th Cir. 2008), as discussed below, Dentsply has a high likelihood of success on the merits. The inquiry amounts to a balancing test using a "sliding scale" approach, where "the more likely [that the] plaintiff will succeed on the merits, the less the balance of irreparable harms need favor plaintiff's position." *Ty, Inc. v. Jones Group*, 237 F.3d 891, 895 (7th Cir. 2001).

Moreover, a court may issue a restraining order without notice to the opposing side if

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

Here Dentsply has arranged to both (a) serve papers on Edge Endo's registered agent for service of process in New Mexico (the state in which it is incorporated); and (b) provide by email a courtesy copy of its papers to intellectual property counsel representing Edge Endo in collateral patent infringement litigation involving Edge Endo's endodontic files. McCallum Dec.

Trademark infringement, by its very nature, results in irreparable harm. *Int'l Kennel Club of Chi., Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988) ("damages occasioned by trademark infringement are by their very nature irreparable and not susceptible of adequate measurement for remedy at law"). Courts in this district have therefore have not hesitated to order injunctive relief in trademark actions. *SBA-TLC, LLC v. Merlin Corp.*, No. 15-

cv-8426, 2015 WL 6955493 (N.D. Ill. Nov. 10, 2015) (granting motion for preliminary injunction in trademark matter); *Monster Energy Co. v. Chen Wensheng, et al.*, No. 15-cv-4166 (Dkt. 22) (temporary restraining order), (Dkt. 33) (preliminary injunction); *Venus Labs., Inc. v. Vlahakis*, No. 15-cv-1617, 2015 WL 1058264 (N.D. Ill. Mar. 5, 2015) (granting a temporary restraining order, preventing, among other actions, use of an infringing trademark at an upcoming trade show); *Tory Burch LLC v. P'ships and Unincorporated Ass'n Identified on Schedule "A" and Does 1-100*, No. 13-cv-2059, 2013 WL 1283824 (N.D. Ill. Mar. 27, 2013) (granting a temporary restraining order); *Dental USA, Inc. v. McClellan*, No. 13-cv-260, 2013 WL 4451257 (N.D. Ill. Aug. 16, 2013) (granting a preliminary injunction, barring use of mark, including specifically at an "upcoming trade show").

Dentsply is highly likely to succeed on the merits, and it will suffer irreparable injury if this Court does not issue immediate relief. Finally, the public interest would also be served by an injunction, as the public always has an interest in not having consumers confused as to the proper origin of products.

A. Dentsply is Likely To Succeed on the Merits

Dentsply has a federally-registered mark, PathFile, for a dental file product which it has been selling for the past six years. Edge Endo has introduced a competing product that takes Dentsply's trademark and merely puts its own name in front of it. Imagine, to use a direct analogy, if Burger King launched a new hamburger product and named it the Burger King Big Mac™. As a result, Dentsply is likely to succeed on its claim for trademark infringement under 15 U.S.C. § 1114(1) and unfair competition under 15 U.S.C. § 1125(a).

In order to prevail on a claim of trademark infringement under 15 U.S.C. § 1114(1)(a), or unfair false designation under 15 U.S.C. § 1125(a)(1)(A), a plaintiff must demonstrate "(1) that it has a protectible trademark, and (2) a likelihood of confusion as to the origin of the defendant's product." *Ty, Inc.*, 237 F.3d at 897. At this stage, Dentsply need only demonstrate a "better than negligible" chance of success on the merits. *Id.*

1. *Dentsply's PathFile mark is protected under the Lanham Act*

Dentsply owns U.S. Trademark Registration No. 3,929,706 for the mark PathFile. Phillips Dec. at Ex. A. Pursuant to 15 U.S.C. § 1115, this registration serves as *prima facie* evidence of the validity and registration of the PathFile mark, of Dentsply's ownership of the registered mark, and of Dentsply's exclusive right to use the registered marks in commerce on or in connection with the goods identified in the registration. Because Dentsply's PathFile mark is registered with the USPTO, it is protected under the Lanham Act.

2. *Edge Endo's Use of EdgePathFile is Likely to Cause Confusion*

The Seventh Circuit has enumerated seven factors to consider when determining the likelihood of confusion between competing marks: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of complainant's marks; (6) actual confusion; and (7) the intent of defendant to palm off their products as that of another. *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 461–62 (7th Cir. 2000) (internal citations omitted). These are not a "mechanical checklist," and the proper weight to apply to each will vary according to the facts a given case. *Id.* Here, the similarity of the marks and Edge Endo's intent without question demonstrate a likelihood of success on the merits.

1. Similarity of the marks

Dentsply's registered mark is PathFile. Edge Endo's mark is EdgePathFile. Edge Endo's mark incorporates Dentsply's entire mark, and is therefore nearly identical and undoubtedly similar. This factor heavily favors Dentsply.

Edge Endo's attempt to appropriate the mark by adding "Edge" to PathFile only aggravates the confusion. A consumer may rationally assume that Dentsply has "licensed, approved or otherwise authorized the defendants' use of" the mark. *Int'l Kennel Club of Chi.*, 846 F.2d at 1088 (discussing the addition of a "house mark" in conjunction with the infringing trademark on advertising material). Edge Endo's actions are, at best, "a smoke screen and a poor excuse for the [ ] blatant misappropriation of the plaintiff's name." *Id.* Indeed, "[t]he addition of Defendant's mark to another's trademark is often an aggravation, not a justification, and the second mark does not dissipate the confusion caused through the use of the infringing mark." *Cigarette Racing Team, Inc. v. Donzi Marie Corp.*, No. 85-C-07947, 1985 WL 71995, at *9 (N.D. Ill. Sept. 16, 1985).

The Seventh Circuit's *Kennel Club* decision is instructive. There, the defendants had appropriated the plaintiff's mark "International Kennel Club." The defendants contended that their use was distinctive because (1) plaintiff typically used its full name, including the phrase "of Chicago," and (2) defendants' advertisements also included their "24K Polar Puff" house mark. The Court of Appeals for the Seventh Circuit disagreed, concluding there was "more than ample support" for the conclusion that the degree of similarity between the marks supported a finding of a likelihood of confusion. *Int'l Kennel Club of Chi., Inc.*, 846 F.2d at 1088-89.

Likewise, *Dental USA, Inc. v. McClellan*, No. 13-cv-260, 2013 WL 4451257 (N.D. Ill. Aug. 16, 2013), a trademark infringement case involving dental products, is directly analogous to the facts here. There, the plaintiff had a trademark identifying its "Power Elevator" product, and a former employee sought to compete with an allegedly identical "Misch Power Elevator" product. The addition of "Misch" did not dissuade this court from concluding that there was a likelihood of confusion between the marks, and it therefore entered a preliminary injunction prohibiting the use of the infringing term. *Id.* at *4.

In summary, the marks are clearly similar (indeed, they are identical, with the only difference being that Edge Endo has inserted a part of its own name "Edge" in front). This factor heavily favors Dentsply.

2. Similarity of the products

Both Dentsply and Edge Endo use the marks at issue on nickel-titanium alloy files for use in root canals. Philips Dec. ¶17. A "pathfile" was not a dental industry term until Dentsply introduced its PathFile product. As described below, Edge Endo is plainly attempting to compete directly with Dentsply's product, using Dentsply's trademarked name. This factor overwhelmingly favors the granting of immediate relief.

3. Area and manner of concurrent use

The parties' respective products are sold nationally and are in competition with each other. Edge Endo's marketing is built on demonstrating how its products compete with Dentsply's, so much so that they are advertised as "compatible." Edge Endo is targeting the same customers in the same markets with products designed to directly compete with Dentsply. Indeed, both companies will be exhibiting at the Chicago MidWinter trade show, which begins on Thursday. Phillips Dec. ¶15. Edge Endo's infringing trademark at issue here is only the latest example. This factor too favors Dentsply.

4. Degree of care likely to be exercised by consumers

Disposable endodontic files like those at issue here are a relatively inexpensive product. They typically sell for less than ten dollars per file. "The more widely accessible and inexpensive the products and services, the more likely that consumers will exercise a lesser degree of care and discrimination in their purchases." *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 683 (7th Cir. 2001). Thus, consumers are more susceptible to confusion. This factor also favors Dentsply.

5. Strength of Dentsply's Mark

The fifth factor, the strength of the marks, weighs in favor of Dentsply. "The term 'strength' as applied to trademarks refers to the distinctiveness of the mark, or more precisely, its tendency to identify the goods sold under the mark as emanating from a particular source." *Eli Lilly*, 233 F.3d at 464. Dentsply's PathFile products have been available for over six years and the use of the PathFile mark has been exclusive to Dentsply. Dentsply has advertised its mark, the mark is the subject of a federal registration, and the mark has developed goodwill with the relevant public. Therefore, the PathFile mark is distinctive and the goods sold under the mark have a tendency to be identified as emanating from Dentsply.

6. Actual confusion

While no specific evidence of actual confusion exists because Edge Endo has not yet launched its product (and only began introducing it a few days ago), the likelihood of actual confusion is high because Edge Endo is selling near-identical products under a nearly identical mark. And Dentsply "cannot be expected to tender such evidence [of actual confusion] at this stage." *Eli Lilly & Co.*, 233 F.3d at 464. Regardless, proof of actual confusion is not required to prove that a likelihood of confusion exists, particularly given the compelling evidence on the other factors. *See CAE, Inc.*, 267 F.3d at 685.

7. Intent of defendants to palm off its product as that of another

Intent is an "important factor," and it "can even be weighed more heavily than other factors." *Eli Lilly & Co.*, 233 F.3d at 465. Edge Endo's actions are as blatant as they could be. Edge Endo has copied Dentsply's mark, put its name before the mark, and now is using that mark to sell a product to directly compete with Dentsply's innovative PathFile product. It does not take much to infer intent from these actions, but even that is not necessary. Endge Endo has a history of copying Dentsply's products, touting its' products "compatibility" with Dentsply products, and instructing customers how to use Edge Endo products in combination with Dentsply drills (into which the files fit). Finally, Edge Endo's President has spoken directly to this matter, when in response to a query as to whether Edge Endo had plans to offer a "pathfile clone" he recommended an Edge Endo product "as a pathfile," noting "a lot of dentists and endodontists use it as a pathfile." Philips Dec. at Ex. J. Edge Endo has now taken the final step, appropriating Dentsply's trademarked product name as well.

A balance of the relevant confusion factors overwhelmingly demonstrates a likelihood of confusion and consequently a likelihood of success on the merits.

B. Dentsply Will Suffer Irreparable Harm without Immediate Relief

Dentsply has also established that it will suffer irreparable harm absent an immediate transfer of the domain name. Irreparable harm is that which is "not fully compensable or avoidable by the issuance of a final judgment." *Kraft Foods Groups Brands LLC v. Cracker Barrel Old Country Store, Inc.*, 735 F.3d 735, 740 (7th Cir. 2013). The vast majority of decisions from this Court and the Seventh Circuit have applied a presumption that irreparable harm is present once trademark infringement is established. *See, e.g., Ty, Inc. v. Jones Group*, 237 F.3d 891, 902 (7th Cir. 2001) (noting that trademark infringement "injuries are presumed to be irreparable because it is virtually impossible to ascertain the precise economic consequences of intangible harms, such as damage to reputation and loss of goodwill, caused by such violations") (internal citation omitted); *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 469 (7th Cir. 2000) ("Irreparable harm is generally presumed in cases of trademark infringement and dilution."); *SBA-TLC, LLC v. Merlin Corp.*, No. 15-cv-8426, 2015 WL 6955493, at *2 (N.D. Ill. Nov. 10, 2015) ("Indeed, the Seventh Circuit presumes irreparable harm in trademark and trade dress infringement cases."); *Dental USA, Inc.*, No. 13-cv-260, 2013 WL 4451257, at *4 ("Again, injuries arising from Lanham Act violations are presumed to be irreparable, even absent a showing of business loss."). *But see National Financial Partners Corp. v. Paycom Software, Inc.*, No. 14-cv-7424, 2015 WL 3633987, at *11 (N.D. Ill. June 10, 2015) (finding that the Seventh's Circuit presumption should no long apply following the Supreme Court's *eBay* decision in 2006).

Dentsply has also demonstrated that it will be irreparably harmed absent immediate injunctive relief. Irreparable harm is "especially likely in a trademark case because of the difficulty of quantifying the likely effect on a brand of a nontrivial period of consumer confusion." *Kraft Foods Groups Brands LLC*, 735 F.3d at 741. Indeed, the value in Dentsply's trademark is the goodwill and brand reputation that Dentsply has accumulated through "expenditures on product quality and quality control, service, [and] advertising." *Id.* at 739 (affirming grant of preliminary injunction, noting the strong case on the merits and therefore "the risk to Kraft of the loss of valuable goodwill and control therefore palpable," *id.* at 741). The harm that Dentsply suffers by losing control over its mark, and consequently its brand, is irreparable. *Int'l Kennel Club of Chi., Inc.*, 846 F.2d at 1092 ("[T]he most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendants' goods."); *5 McCarthy on Trademarks and Unfair Competition*, § 30:47.30 (4th ed.) ("This threatened and actual loss of reputation and good will cannot adequately be compensated for dollars and cents after the fact."). As long as Edge Endo continues to use Dentsply's PathFile mark to offer competing products, Dentsply will continue to suffer irreparable harm.

In the one case we have found from this district that declined to apply a presumption of irreparable harm, the Court found, for reasons that apply to this case, that there was irreparable harm. *National Financial Partners Corp. v. Paycom Software, Inc.*, No. 14-cv-7424, 2015 WL 3633987. Specifically, the court found "probative" the plaintiff's "time and resources promoting its trademark," concluding that any "infringement that impedes the identifying function will cause significant harm." *Id.* at *12. Also weighing in favor of a finding of irreparable harm was the fact that the "target audiences are identical." *Id.* So too here. Dentply's has invested in, and promoted, its PathFile mark. Edge Endo is now targeting the same audience with its confusingly similar product. Dentsply will therefore suffer irreparable harm absent an injunction.

In sum, even absent the presumption of harm that flows from a likelihood of success on the merits, Dentsply has demonstrated immediate and ongoing irreparable harm.

C. The Public Interest Favors Immediate Relief

The public interest also favors the issuance of a temporary restraining order or preliminary injunction, as it will prevent consumer confusion. *Eli Lilly & Co.*, 233 F.3d at 469 (7th Cir. 2000) ("the public interest is served by the injunction because enforcement of the trademark laws prevents consumer confusion"). "The trademark laws . . . are concerned not alone with the protection of a property right existing in the individual, but also with the protection of the public from fraud and deceit." *Stahly, Inc. v. M.H. Jacobs Co.*, 183 F.2d 914, 917 (7th Cir. 1950). Accordingly, the public interest favors entry of a temporary restraining order or preliminary injunction.

D. The Balance of Equities Favors Immediate Relief

The harm Dentsply will continue to suffer due to Edge Endo's infringement outweighs any potential harm to Edge Endo. Moreover, "the more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor." *Girl Scouts of Manitou Council, Inc*,, 549 F.3d at 1086. As described above, Dentsply has demonstrated a strong likelihood of prevailing on the merits, minimizing the need to balance the harm. But even putting aside the strength of Dentsply's claims, the balance still significantly weighs in Dentsply's favor.

If immediate relief is not granted, Dentsply will lose control of its mark, its brand, and consequently the goodwill associated with that. On the other hand, Edge Endo is only starting to promote its infringing product and intends to introduce it at the Chicago Dental Society MidWinter Meeting on February 25. An injunction would preserve the status quo. Moreover, the relief requested is narrow and restricted only to the use of EdgePathFile. Edge Endo is free to attend trade shows, and advertise or sell any of their other products, just not an infringing product. Accordingly, the balance of equities weighs in favor of Dentsply.

IV. CONCLUSION

For the foregoing reasons, Dentsply respectfully request that this Court order a Temporary Restraining Order and issue a preliminary injunction enjoining Edge Endo from using the mark EdgePathFile.

Dated: February 22, 2016

Respectfully submitted,

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